

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Section 64.702 of the Commission's Rules  
With Respect to Non-Dominant Resellers  
Of Interexchange Services

**ORDER**

Adopted: December 11, 1995; Released: January 16, 1996

By the Commission:

1. In this Order, we deny the above-captioned petition for clarification or waiver on the ground that the issues raised therein are more appropriately addressed in a rulemaking proceeding.

2. On May 14, 1993, the law firm of Swidler & Berlin, Chartered, filed a petition on behalf of several non-dominant resellers of interexchange services ("petitioners") for clarification or, alternatively, waiver of Section 64.702(e) of the Commission's rules, which prohibits the bundling of interstate common carrier services with customer premises equipment (CPE).<sup>1</sup> The Commission adopted the unbundling rule in 1980 because of our concern that the bundling of services with CPE would have adverse effects on both consumer choice and the development of a competitive CPE market.<sup>2</sup>

3. Petitioners argue that these concerns are unfounded with respect to non-dominant interexchange service resellers. Petitioners assert that since these carriers lack the market power to impede competition in the CPE market, it is unnecessary to apply the unbundling rule to them. Moreover, they claim that enforcement of the rule against such carriers inhibits CPE competition in niche markets and harms consumers who would prefer to have the option of obtaining specifically tailored, cost-effective packages of CPE and service. Accordingly, petitioners request clarification or waiver of the unbundling rule with respect to non-dominant interexchange service resellers.<sup>3</sup>

4. We deny petitioners' request. The relief requested, if granted, would significantly change the scope of the application of our current unbundling rule. Such a significant modification is more appropriately considered through a rulemaking than through a petition for waiver. We recently announced our intention to open a rulemaking proceeding to reexamine our regulation of in-

terstate, domestic, interexchange services in light of changes that have taken place in the interexchange market.<sup>4</sup> We believe that this rulemaking would be the appropriate forum in which to consider whether our CPE unbundling rule continues to be necessary, and, if so, to which carriers it properly applies.

5. Accordingly, IT IS ORDERED, pursuant to 47 C.F.R. § 1.3, that the petition of Swidler & Berlin, Chartered, for clarification or waiver of Section 64.702(e) IS DENIED, and that the above-captioned proceeding IS hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

<sup>1</sup> Section 64.702(e) provides: "Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis." 47 C.F.R. § 64.702(e).

<sup>2</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations (*Second Computer Inquiry*), Final Decision, 77 FCC 2d 384 (1980), modified on recon., 84 FCC 2d 50 (1980), further modified, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and

Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 983 (1983), *aff'd* on second further recon., FCC 84-190 (released May 4, 1984).

<sup>3</sup> Pleading Cycle Established for Comments on Petition for Clarification or, Alternatively, Waiver of the CPE Unbundling Rules, Public Notice, DA 93-688 (1993). Sixteen parties filed comments on the petition, and twelve parties filed reply comments. The record closed on August 3, 1993.

<sup>4</sup> See *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427, at paras. 2, 168 (released Oct. 23, 1995).